LAWYERS

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

DAVID OXENFORD
DIRECT (202) 973-4256
davidoxenford@dwt.com

SUITE 200
1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-3402

TEL (202) 973-4200
FAX (202) 973-4499
www.dwt.com

April 29, 2008

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: MM Docket No. 99-325,
Submission for the Record by
National Association of Media Brokers

Dear Ms. Dortch:

On Monday, April 28, 2008, we filed the Comments of the National Association of Media Brokers ("NAMB") in response to the Notice of Proposed Rulemaking in *Broadcast Localism*, 23 FCC Rcd. 1324 (2008) ("*NPRM*"). As set forth at note 1 of those Comments, were are hereby submitting into the record in the above-referenced proceeding a copy of the NAMB's *Broadcast Localism* Comments, pursuant to the *NPRM*'s statement that "issues [ ] in other … proceedings discussed in this [*NPRM*] … will be resolved with the record of each such proceeding," including the possibility of requiring licensees to maintain a physical presence at each of their radio stations during all hours of operation, which "will be resolved in … MM Docket No. 99-325." *See NPRM*, 23 FCC Rcd. at 1329, 1339 nn.14 & 58. As the NAMB's *Broadcast Localism* Comments address an issue that will be decided in this docket, we are submitting those Comments for consideration therein.

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,

David Oxenford

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	MB Docket No. 04-233
Broadcast Localism	)	
	)	

To: The Commission, Office of the Secretary

COMMENTS OF THE NATIONAL ASSOCIATION OF MEDIA BROKERS

The National Association of Media Brokers ("NAMB") hereby submits its comments in response to the *Notice of Proposed Rulemaking* in the captioned matter, which seeks to "enhance localism practices among broadcasters."[1] The NAMB is a trade association whose members are the media brokers who facilitate the purchase and sale of radio and television stations, and who assist in the structuring and financing of such transactions. Through involvement in the vast majority of broadcast transactions, the members of the association have extensive knowledge of the economics of the industry, and of individual stations and the markets in which they operate. We offer these comments in this proceeding out of a concern that some of the Commission's proposals will disrupt the financial operations of many broadcast stations, discourage investment in the industry, and undermine the values of many established broadcast properties.

At a time when the broadcast industry is facing competition for audience, advertising, and investment from the explosion of choices in the new digital media world, imposing new

[1] *Broadcast Localism*, 23 FCC Rcd. 1324, 1327 (2008) ("*NPRM*"). Concurrently with the filing of these Comments, NAMB is submitting them in the record on the Second Further Notice of Proposed Rulemaking in MM Docket No. 99-325, *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, 22 FCC Rcd. 10344 (2007). *See NPRM*, 23 FCC Rcd. at 1329, 1339 nn.14 & 58 ("issues [ ] in other … proceedings discussed in this [*NPRM*] … will be resolved with the record of each such proceeding," including potentially requiring that a licensee maintain a physical presence at each of its radio stations during all hours of operation, which "will be resolved in … MM Docket No. 99-325").

regulatory burdens that do not have clear and measurable public interest benefits not already guaranteed by marketplace forces would cripple an industry that now more than ever needs to be flexible and innovative to compete. In many instances, the regulatory burdens and their results will fall most heavily on small and independent stations, and on new broadcast entrants, some of the very groups that the Commission is looking to as sources of new choices and voices in the media landscape. For these reasons, the NAMB urges the Commission to rethink the detailed re-regulatory proposals contained in the *NPRM*.

While we are certain other commenters will raise issues steeped in FCC precedent, administrative law, and the First Amendment, the NAMB feels it is critical that the Commission realize the significant detrimental economic impact such rules will have on the operations of broadcast stations, the sunk costs of existing licensees, and would-be new entrants in the broadcast industry. The programming and operational rules proposed in the *NPRM* stand not only to "turn back the clock on decades of deregulatory progress" but also to upset the market for radio and TV properties "by imposing … burdensome regulations on broadcasters."[2] This runs directly counter to decades of FCC policy, beginning with the 1981 elimination of rules and policies that forced stations to keep program logs and to conduct formal ascertainment of community issues, that imposed requirements mandating the amount of non-entertainment programming that all stations must undertake, and which limited the amount of commercial time broadcast on each station.[3] It also is contrary to the adoption of simplified renewal procedures that followed, which eliminated detailed questions about licensees' specific news and public

---

[2] Letter from Reps. Mike Ross, Marsha Blackburn, *et al.*, to Hon. Kevin J. Martin, in MB Docket No. 04-233, April 15, 2008 at 1 ("*House Letter*").

[3] *Deregulation of Radio*, 84 F.C.C.2d 968 (1981). The FCC similarly deregulated TV in 1984; *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Requirements for Commercial Television Stations*, 98 F.C.C.2d 1075 (1984).

affairs programming and their ascertainment processes,[4] as well as rule changes to permit broadcasters to locate their main studios outside their communities of license, to eliminate the station program origination rule,[5] and to allow unattended station operation and expanded remote control and monitoring of station technical operations.[6]

This relaxation of regulatory obligations was significant, as these rules were quite burdensome, and did not measurably increase the ability of a broadcaster to serve its audience. In fact, since these rules were relaxed, there has been a dramatic growth in the number of stations in the country and in most markets, as well as in the competition that all stations face. In doing away with these rules, the Commission determined it was sufficient that "market forces, in an increasingly competitive environment, would encourage broadcasters" to serve their local communities. *Broadcast Localism*, 19 FCC Rcd. 12425 (2004). *Accord, NPRM*, 23 FCC Rcd. at 1329. Nothing has changed in a way that would undercut this assumption – in fact from all that we can see, the media landscape has become vastly more competitive since these rules were relaxed.

Even from a cursory reading of the trade press, it is clear that this is a time of concern and reevaluation in the broadcast industry, due principally to competition from other media outlets. Radio revenues, in particular, have been flat over the last year. Financing for broadcast acquisitions has in the last six months become significantly tighter, as witnessed by the difficulties in the closing of several major broadcast transactions in recent months. In the current environment,

---

[4] *See, e.g., Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983). In its place, FCC rules required broadcasters to file quarterly reports listing programs that provided their most significant treatment of community issues (the "issues/programs list") with brief narratives of what issues received significant treatment and which programs met particular needs.

[5] *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 3 FCC Rcd. 5024 (1988).

[6] Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements, 10 FCC Rcd. 11479 (1995).

it simply does not make sense to vastly increase the costs of operations of broadcast stations– this only makes them even less attractive to investors who can shift their money easily into other less regulated media sectors that can operate at lower costs. While we recognize FCC concerns in assuring stations serve their communities, we know that every station already has a great incentive to serve their communities, as only those that successfully determine the needs of their audiences and provide programming that meets them will survive in the ever more competitive marketplace. Specific paperwork burdens do not translate into better public service, they only translate into a greater economic and regulatory burden on the licensees

The proposals advanced in the name of increasing "localism" are a particular burden to smaller and independent broadcasters, and others of limited financial means. Gathering information for the new, substantially more detailed quarterly reports will require a significant commitment of resources, as stations will have to monitor all programming (including all network and syndicated offerings) to determine if it contains any significant discussion of important issues of public concern, and if so identify it by name, topic, duration, and time of broadcast. This will require a minute-by-minute review of station operations, and daily updates to be able to provide the necessary reports and, consequently, a major commitment of manpower for FCC-mandated "make work". Community advisory boards, reports on the music selection process, and detailed quantitative programming obligations also will add substantially to the costs of station operations, and the potential for regulatory disputes. Increased costs and greater regulatory uncertainty are both anathema to those who provide equity and debt financing for the acquisition and improvement of broadcast stations. While it may be possible for some larger groups operating in larger markets to absorb these costs, they present a high obstacle in the path of new entrants and smaller operators.

While some have suggested these burdens can be met by broadcasters simply by raising their rates and revenues, our members know that simply is not possible. In a market where the prices of broadcast stations are determined based on a multiple of cash flow, station operators now have every possible incentive to make every possible dollar they can, as a dollar earned in advertising sales can result in ten dollars in any sale of the property. Yet stations cannot raise advertising prices at will, as there are competitive pressures that simply do not allow that to happen. And these pressures come not only from other broadcasters, but also from media not regulated by the FCC – not only new digital media but a host of "old" media that compete for broadcast dollars including billboards, newspapers, "shoppers," direct-mail, and other display ads.

Additionally, the advertising universe is limited, and cost-sensitive, particularly in smaller markets. If broadcasters could make more money, they already would be doing so. But since that is not an option, and as most have financial obligations to meet from operations based on their current revenue projections, increased regulatory costs can be met only through cutting other costs. Many of the likely areas for cuts are in services the Commission should be trying to encourage. For instance, our members have heard from many small market stations that the proposals for 24-hour staffing will simply mean that these stations will no longer operate 24 hours a day, as they produce little revenue from all-night operations, but rather operate overnight merely as a service to their audiences. If these stations have to be manned during all hours of operations, many simply will not operate overnight but instead will go back to shutting off at 10 PM or midnight, just as they did a decade ago, before the unattended operations rules were adopted. Does a lesser amount of service really benefit the public?

Similarly, the proposal to require a main studio in each community of license will vastly increase the costs of station operation. There can be no doubt the costs of operating two (or more) main studios for stations that concurrently serve multiple communities of license with consolidated operations will divert resources to redundant physical plants that otherwise could go to producing or obtaining programming. More than any other of the proposed rule changes, this one will impose a direct and immediate penalty on broadcasters who have structured their operations – and made investment decisions – based on the rules that have been in place for the last two decades. If broadcasters must bear the above-mentioned costs of breaking up studio operations they have consolidated, the immediate effect will be an increase in operational costs, a decrease in cash flow, and an immediate reduction in the value of the stations involved, for no meaningful public interest benefit. As many current owners based their investment decisions on station operations as they currently are structured, an increase in costs and a decrease in cash flow will upset their investment assumptions, which could trigger loan covenant defaults and have other financial repercussions throughout the industry. Has a public interest benefit really been demonstrated that would justify such possible ramifications?[7]

Cumulatively, these proposed rules add significant costs on broadcasters and upset investment decisions based on legitimate reliance on existing rules, without any appreciable public interest benefit. As the *House Letter* recognized, "[r]everting to out-of-date rules would impose significant costs on [ ] licensees that have made good faith investments based on rule changes" and these costs "will harm [their] ability to serve the public interest." *House Letter*, *supra* note 2, at 1. The Commission should not entertain inviting these serious deleterious effects, when the incredibly competitive media marketplace already ensures that broadcasters will serve their audiences or lose them. The FCC simply does not need to intervene with the proposed detailed return to regulation.

[7] Even a grandfathering provision for existing main studios would not calm investors, as changes in broadcast ownership or the locations of main studios, which may fall outside of such grandfathering, would again upset station valuations.

CONCLUSION

For the foregoing reasons, the NAMB respectfully urges the Commission to reject the costly and unnecessary proposals in the *NPRM* to impose substantial new programming and operational obligations on broadcasters.

Respectfully submitted,

NATIONAL ASSOCIATION OF MEDIA BROKERS

By /s/ David D. Oxenford

David D. Oxenford
Ronald G. London
DAVIS WRIGHT TREMAINE, LLP
1919 Pennsylvania Avenue, N.W. Suite 200
Washington, DC 20006-3402
(202) 973-4200

Their Counsel

Dated: April 28, 2008